

Application Number 09/898,580
Amendment dated October 28, 2005
Responsive to Office Action mailed July 28, 2005

REMARKS

This amendment is responsive to the Office Action dated July 28, 2005. Applicants have amended claims 2, 9 and 13, and added new claims 14–16. Claims 2 and 4–16 are pending.

Claim Rejection Under 35 U.S.C. § 112

In the Office Action, the Examiner rejected claims 9 and 12 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Applicants have amended claim 9 for purposes of clarification.

With respect to claim 12, Applicants respectfully disagree with the Examiner's assertion that the phrase "applied to accessories" renders the claim indefinite. The Federal Circuit has stated that claims are to be interpreted in the context of the entire patent, including the specification. *Phillips v. AWH Corp.*, No. 03-1269, -1286 (Fed. Cir. July 12, 2005) (*en banc*). One of ordinary skill in the art would understand claim 12 in light of the patent application as a whole, including the specification. For example, the specification describes that "fashion accessories could utilize imaged sheeting for decoration, appearance, or brand identity. Such accessories could include purses, wallets, briefcases, backpacks, fanny packs, computer cases, luggage, notebooks and the like." (p.30, ll. 20–23). The specification further explains: "Envisioned applications in the area of safety and protective apparel and accessories include occupational safety apparel, such as vests, uniforms, firefighter's apparel, footwear, belts and hardhats; sports equipment and clothing, such as running gear, footwear, life jackets, protective helmets, and uniforms; safety clothing for children; and the like." (pg. 30, ln. 32–pg. 31, ln. 4). Thus, the term "accessories" is clear in light of the specification.

Applicants submit that both claim 9, as amended, and claim 12 particularly point out and distinctly claim the subject matter, as required by 35 U.S.C. 112, second paragraph.

Claim Rejection Under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 2, 4 and 5 under 35 U.S.C. 102(b) as being anticipated by Magee (US 5,644,431). Applicants respectfully traverse the rejection to the

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extent such rejection may be considered applicable to the amended claims. Magee fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C. 102(b), and provides no teaching that would have suggested the desirability of modification to include such features.

Applicants have amended claim 2 to clarify the fundamental differences between Applicants' claim 2 and the cited prior art. In particular, Magee fails to teach or suggest a layer of material disposed adjacent a first side of a layer of microlenses, wherein the material has one or more images formed therein, wherein at least one of the images is a partially complete image, and wherein each image is associated with one of a plurality of microlenses, as recited by Applicants' claim 2 as amended. Accordingly, Magee lacks the structure recited by claim 2, as clarified, that is capable of producing a composite image that appears to float above the sheeting, float below the sheeting, or float in the plane of the sheeting, as further required by Applicant's claim 2.

As claimed, Applicants' sheeting includes at least one layer of microlenses and a material having one or more images, at least one of the images being a partially complete image. Each of the images is associated with one of the microlenses, and the images and associated microlenses produce a composite image. As shown in Applicants' FIG. 5, one or more of the images forms a partially complete version of a composite image.

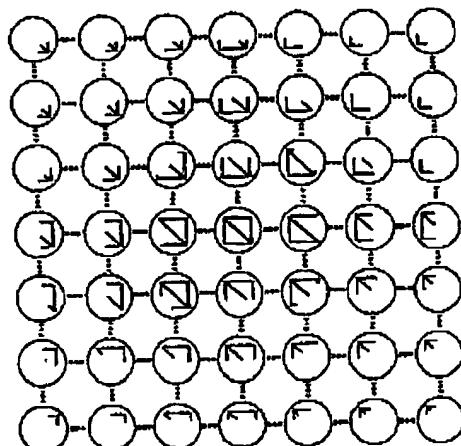


Fig. 5

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As explained in the present application, the images "range from complete replication to partial replication of the composite image. . . . These composite images can also be thought of as the result of the summing together of many images, both partial and complete, all with different perspectives of a real object." (Pg. 14, ll. 1-7). Thus, each of the images is a partial or complete version of the same image, as shown in FIG. 7 of the present application:



Fig. 7

As a result, the structural configuration of the sheeting described above results in a composite image that appears to float above the sheeting, below the sheeting, or float in the plane of the sheeting. (Pgs. 15-17).

In contrast, Magee fails to teach at least one of the images being a partially complete image, wherein each image is associated with one of a plurality of microlenses. To the contrary, Magee describes that each lens magnifies a portion of a single, overall printed image. Unlike the present application, each lens is not associated with one or more images, at least one of which is a partially complete image. For example, FIG. 2 of Magee shows an overall image of a "Blue Star" logo. The "material" of Magee consists of the overall image printed on the lens sheet. The overall image of Magee is produced by printing with graphic or textual printing pigment. (Col. 6, ll. 65-66). FIG. 3 shows a magnified version of the overall logo image, illustrating continuous portions of

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the letter "B" from the overall logo image. According to Magee, "[c]onventional plastic film printing equipment and techniques may be used for imprinting of [the] sheet material." (Col. 5, ll. 4-6). Each *portion* of the overall image, printed on the flat portions 720, is just that—a portion of the overall image. The portions are not in themselves partially complete images in the sense of claim 2, that is, partial or complete versions of the same image. Furthermore, each of the portions of the overall image are in no way "associated with" a particular one of the lenses. Rather, as the viewing angle changes, more than one of the portions of the overall image may be viewed through a single lens. Thus, it is clear that Magee does not disclose at least one of the images being a partially complete image, wherein each image is associated with one of a plurality of microlenses, as required by Applicant's claims.

In order to support an anticipation rejection under 35 U.S.C. 102(b), it is well established that a prior art reference must disclose each and every element of a claim. This well known rule of law is commonly referred to as the "all-elements rule."¹ If a prior art reference fails to disclose any element of a claim, then rejection under 35 U.S.C. 102(b) is improper.² Dependent claims 4 and 5 incorporate all of the limitations of claim 2, and therefore are patentable for at least the reasons expressed above. Magee fails to disclose each and every limitation set forth in claims 2, 4, and 5. For at least these reasons, the Examiner has failed to establish a *prima facie* case for anticipation of Applicants' claims 2, 4, and 5 under 35 U.S.C. 102(b). Withdrawal of this rejection is requested.

Claim Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 6–12 under 35 U.S.C. 103(a) as being unpatentable over Magee (US 5,644,431) in view of Rosenthal (US 4,034,555). Applicants respectfully traverse the rejection. The applied references fail to disclose or suggest the inventions defined by Applicants' claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

¹ See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 USPQ 81 (CAFC 1986) ("it is axiomatic that for prior art to anticipate under 102 it has to meet every element of the claimed invention").

² *Id.* See also *Lewmar Marine, Inc. v. Barent, Inc.* 827 F.2d 744, 3 USPQ2d 1766 (CAFC 1987); *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (CAFC 1990); *C.R. Bard, Inc. v. MP Systems, Inc.*, 157 F.3d 1340, 48 USPQ2d 1225

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In rejecting claim 6, the Examiner correctly recognizes that Magee fails to teach or suggest the element of the sheeting comprising more than one composite image. However, the Examiner asserts that it would have been obvious to one of ordinary skill in the art "to provide the optical device of Magee with more than one composite image, as disclosed by Rosenthal." Applicants respectfully submit that the Examiner has misinterpreted the scope and content of Magee. One of ordinary skill in the art would not be motivated to modify Magee in view of Rosenthal in the manner suggested by the Examiner. As explained above, Magee describes a single overall image, printed with printing pigment on flat portions 720. (FIGS. 1, 3). When the single overall image is imprinted on the flat portions 720, there is no other surface on which to print a second overall image, other than the concave lens surfaces 719. Not only would printing an image on concave indentations prove difficult, but this would also defeat the purpose defined by Magee of being able to see through the sheeting via the lenses when the viewing angle is less than 15–20 degrees. (Col. 6, ll. 58–66). Consequently, combining Magee with Rosenthal does not result in Applicant's claimed invention.

In addition, claims 6–13 are patentable for the same reasons discussed above, since Magee does not teach all of the elements of independent claim 2, upon which claims 6–13 depend. For at least these reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicants' claims 6–13 under 35 U.S.C. 103(a). Withdrawal of this rejection is requested.

Claim 13

Applicants note that in the Office Action the Examiner addressed claims 1–12. However, Applicants' application as filed contains claims 1–13. Applicants assume this is an oversight, and respectfully request that the Examiner address claim 13 in the next communication. Applicant has amended claim 13 to correct a typographical error.

(CAFC 1998); *Oney v. Ratliff*, 182 F.3d 893, 51 USPQ2d 1697 (CAFC 1999); *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 57 USPQ2d 1057 (CAFC 2000).

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New Claims:

Applicants have added claims 14–16 to the pending application. The applied references fail to disclose or suggest the inventions defined by Applicants' new claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed inventions. As one example, the references fail to disclose or suggest a layer of material wherein the material has two or more partial images formed therein, wherein each of the partial images includes at least some *common portion* of the composite image, as recited by claim 14. No new matter has been added by the new claims. Support for claim 14, for example, can be found in FIGS. 5 and 7.

CONCLUSION

All claims in this application are in condition for allowance. Applicants respectfully request reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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